

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

ePLUS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09CV620 (REP)
	)	
LAWSON SOFTWARE, INC.,	)	
	)	
	)	
Defendant.	)	

**TRIAL BRIEF REGARDING THE IDENTITY OF ELEMENT 40 IN  
FIGURE 1A OF THE PATENTS IN SUIT**

One of the inventors, Douglas Momyer, testified that “RIMS 40” shown in Figure 1A of the patents-in-suit does not refer to the RIMS system described in U.S. Patent No. 5,712,989 (“the ’989 patent”). (Trial Transcript at 347:22-248:4). Since then, Lawson has been barred from eliciting testimony or offering other evidence to show Mr. Momyer is wrong. The following is an offer of proof that shows that Mr. Momyer was wrong and that “RIMS 40” in the patents-in-suit does refer to RIMS and Fisher RIMS as described in the ‘989 patent.

The text of the patents-in-suit demonstrates that element 40 of Figures 1A and 2 is the “Fisher RIMS system,” which is the system described in the ‘989 patent. The patents-in-suit define “Fisher RIMS” as used therein to mean the RIMS system described in the ‘989 patent:

One such system is the Fisher Scientific Requisition and Inventory Management System ("Fisher RIMS"), **described U.S. Pat. No. 5,712,989**, filed Apr. 2, 1993 and assigned to Fisher Scientific Company of Pittsburgh, Pa., the disclosure of which is incorporated herein by reference.

‘683 patent, col. 1: 12-15. Two figures in the patents in suit, Figure 1A and Figure 2 include “a requisition/purchasing system **40**, [which] preferably but not necessarily the **Fisher RIMS system . . .**” ‘683 patent, col. 4: 1-3 (emphasis added). The specification of the ‘683 patent

refers to “Fisher RIMS 40,” “Fisher RIMS system 40,” or “Fisher RIMS requisition/purchasing system 40” 33 times. (See Ex. A (with such references highlighted).) The specification also refers to a “requisition/purchasing system 40 (which, in the illustrated embodiment is the Fisher RIMS system) . . .” (the ‘683 patent at 5:29-31 (emphasis added).) It states:

**Fisher RIMS system 40** also includes several **Fisher RIMS databases 42**. These databases 42 preferably include requisition databases 42A, inventory databases 42B, and customer-specific databases 42C, each maintained within OS/2 operating system 32.

‘683 patent, col. 4:20-25 (emphasis added). These databases 42 are shown in Fig. 1A. The specification labels element 40 as “RIMS” without the word “Fisher” only once. (*Id.* at 8:31.) The use of the term “RIMS” standing alone, however, is not defined in the patent as being distinct from “Fisher RIMS.” Moreover, Figs. 1A and 2 reproduced below do not indicate that RIMS 40 is anything different than what the specification says it is, namely “Fisher RIMS.”

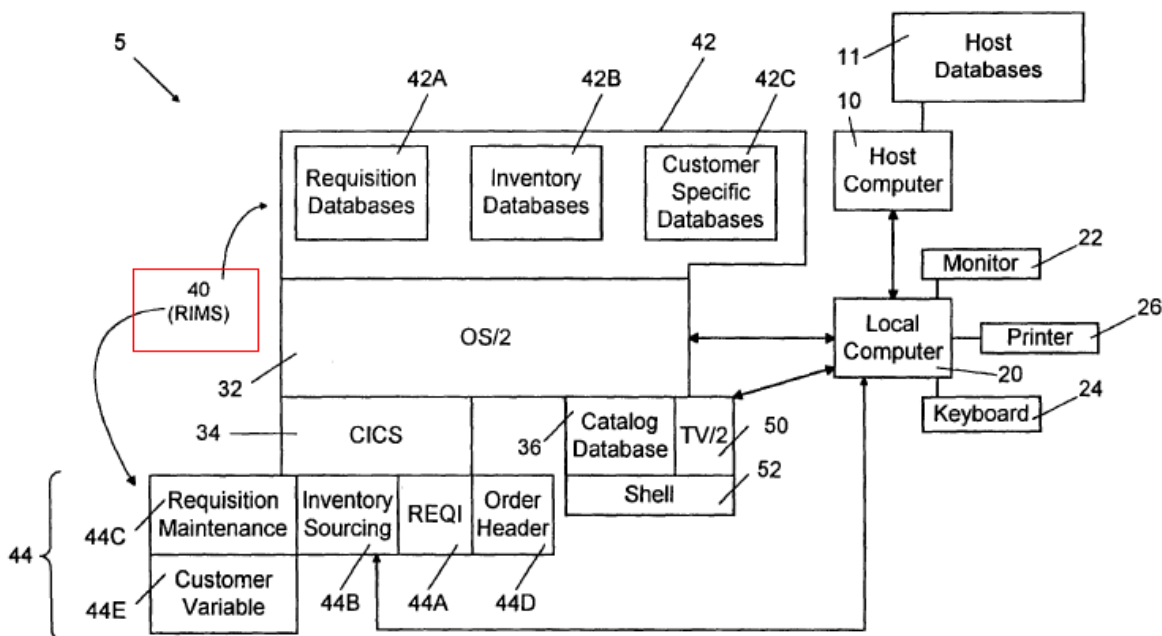


FIG. 1A

(U.S. Patent No. 6,023,683 (“the ‘683 Patent”), Fig. 1A (modifications in red.))

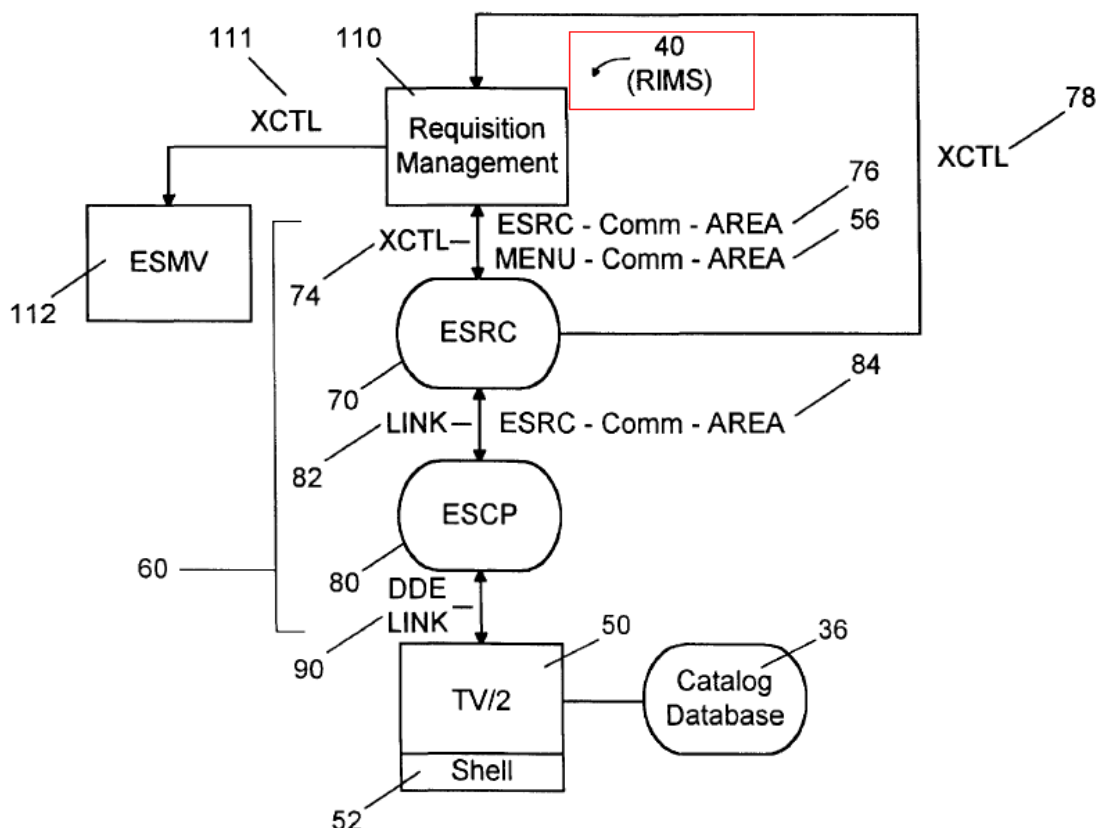


FIG. 2

(the '683 Patent, Fig. 2 (modifications in red).)

The Court has prohibited Lawson from eliciting testimony that element 40 is the Fisher RIMS system as described in the '989 patent in apprehension of jury confusion. (Tr. at 884: 2-11.) At least part of the Court's concern is based on the fact that inventor Douglas Momyer testified that element 40 of Figure 1A is not the commercial version of Fisher RIMS but rather some modified version of RIMS that somehow differed from the commercial version and is not discussed anywhere in the specification of the patents in suit. (Tr. at 816:12-19.)

Lawson should be able to contradict Mr. Momyer's testimony with the overwhelming evidence from the text of the patents in suit that element 40 of Figure 1A is, in fact, the Fisher

RIMS system as described in the '989 patent. Whether Mr. Momyer's testimony is correct and is credible is an issue for the jury to determine.

Lawson should thus be able to elicit testimony and present other evidence that the specification of the patents in suit, which are evidence intrinsic to the patents, is at odds with the testimony of Mr. Momyer, who is one of ePlus's paid consultants. For the Court to rule otherwise would take the question of whether Mr. Momyer's testimony is to be believed as accurate out of the hands of the jury.

For these reasons, Lawson respectfully requests that it be permitted to elicit testimony and present other evidence that element 40 of Figures 1A and 2 of the patents in suit identifies the Fisher RIMS system as described in the '989 patent.

LAWSON SOFTWARE, INC.

By /s/  
Of Counsel

Dabney J. Carr, IV (VSB No. 28679)  
Robert A. Angle (VSB No. 37691)  
Megan C. Rahman (VSB No. 42678)  
[dabney.carr@troutmansanders.com](mailto:dabney.carr@troutmansanders.com)  
[robert.angle@troutmansanders.com](mailto:robert.angle@troutmansanders.com)  
[megan.rahman@troutmansanders.com](mailto:megan.rahman@troutmansanders.com)

**TROUTMAN SANDERS LLP**

1001 Haxall Point, Richmond, VA 23219  
Telephone: (804) 697-1200  
Facsimile: (804) 697-1339

Daniel McDonald (admitted *pro hac vice*)  
William D. Schultz (admitted *pro hac vice*)  
Rachel C. Hughey (admitted *pro hac vice*)  
Andrew J. Lagatta (admitted *pro hac vice*)  
Joshua P. Graham (admitted *pro hac vice*)

**MERCHANT & GOULD P.C.**

3200 IDS Center, 80 South Eighth Street,  
Minneapolis, MN 55402  
Telephone: (612) 332-5300  
Facsimile: (612) 332-9081

*Counsel for Defendant Lawson Software, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on this 18<sup>th</sup> day of January, 2010, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Craig T. Merritt  
Henry I. Willett, III  
**CHRISTIAN & BARTON, LLP**  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
[cmerritt@cblaw.com](mailto:cmerritt@cblaw.com)  
[hwillett@cblaw.com](mailto:hwillett@cblaw.com)

James D. Clements  
Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, MA 02109-2881  
[jclements@goodwinprocter.com](mailto:jclements@goodwinprocter.com)

Scott L. Robertson  
Jennifer A. Albert  
David M. Young (VSB No. 35997)  
Goodwin Procter, LLP  
901 New York Avenue, N.W.  
Washington, DC 20001  
[srobertson@goodwinprocter.com](mailto:srobertson@goodwinprocter.com)  
[jalbert@goodwinprocter.com](mailto:jalbert@goodwinprocter.com)  
[dyoung@goodwinprocter.com](mailto:dyoung@goodwinprocter.com)

*Attorneys for ePlus, Inc.*

\_\_\_\_\_/s/  
Dabney J. Carr, IV (VSB No. 28679)  
Robert A. Angle (VSB No. 37691)  
Megan C. Rahman (VSB No. 42678)  
[dabney.carr@troutmansanders.com](mailto:dabney.carr@troutmansanders.com)  
[robert.angle@troutmansanders.com](mailto:robert.angle@troutmansanders.com)  
[megan.rahman@troutmansanders.com](mailto:megan.rahman@troutmansanders.com)

**TROUTMAN SANDERS LLP**

1001 Haxall Point  
Richmond, VA 23219

Telephone: (804) 697-1200

Facsimile: (804) 697-1339

*Counsel for Defendant Lawson Software, Inc.*